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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 ALLEN FRED ALTERGOTT,

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9 Plaintiff,

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10 vs.

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11 SENNA et al.,

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ORDER

12 Defendants.

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13 _____)

14 This prisoner civil rights action arises out of an alleged delay in dental care. Pending
15 before the Court is a Report and Recommendation (“R&R”) of the Magistrate Judge to deny a
16 pending motion for summary judgment. The Court adopts the R&R in part but respectfully
17 disagrees that Defendant Jones could be found to have been deliberately indifferent to Plaintiff’s
18 serious dental needs based on the evidence adduced.

19 The evidence indicates that Jones denied an informal grievance on February 11, 2013
20 based on the unavailability of a dental assistant, notifying Plaintiff that he would be scheduled for
21 an appointment upon the dental assistant’s return. There is no evidence adduced that Jones had
22 any additional ability to provide dental care. Jones denied another informal grievance on
23 September 30, 2015 based on Plaintiff’s dental records, which indicated that two of Plaintiff’s
24 molars had been extracted on March 19, 2013 and that Plaintiff had been seen in the interim (in
25 July 2013) with no further complications. The dental records were inconsistent with Plaintiff’s

1 claim of needing treatment due to having "lost" two molars on March 19, 2013. Jones cannot be
2 found to have been deliberately indifferent under those circumstances. The Court respectfully
3 disagrees that an administrative regulation of the Nevada Department of Corrections indicating
4 that Jones was to investigate and respond to the grievances does anything to enhance (or
5 diminish) Plaintiff's rights under the Eighth Amendment. In any case, the evidence does not
6 appear disputed that Jones did investigate and respond to both grievances. Her investigations
7 and responses, *see supra*, do not approach the level of subjective indifference required to make a
8 showing of cruel and unusual punishment under the Eighth Amendment.

9 **CONCLUSION**

10 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 63) is
11 ADOPTED IN PART and REJECTED IN PART.

12 IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 23) is
13 GRANTED as to Defendant Jones but DENIED as to Defendant Senna.

14 IT IS SO ORDERED.

15 **Dated this 17th day of February, 2017.**

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ROBERT C. JONES
United States District Judge

